

ORIGINAL  
FILE

WILLIAM J. PENNINGTON, III  
ATTORNEY & COUNSELOR AT LAW  
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WILMINGTON, NORTH CAROLINA 28406  
TELEPHONE 919-762-7897

FCC MAIL BRANCH

NOV 17 1992

November 12, 1992

RECEIVED

NOV 18 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Donna Searcy, Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

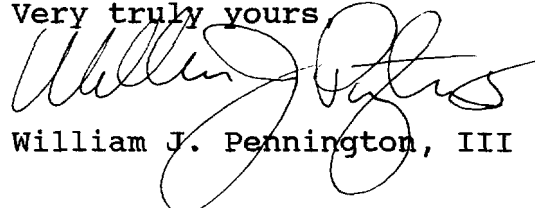
RE: MM Docket No. 92-49

Dear Ms. Searcy:

Transmitted herewith, on behalf of KYOO Broadcasting Company and KJEM-FM, A Limited Partnership, is an original and four copies of "Joint Request for Approval of Agreement, Dismissal of Counterproposal and Grant of Petition". This request is associated with rule making proceeding, MM Docket No. 92-49.

Should there be any questions regarding this matter please do not hesitate to contact this office.

Very truly yours,



William J. Pennington, III

WJP/tlt  
Enclosure  
cc: As per Certificate of Service

No. of Copies rec'd  
List A B C D E

049

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FCC MAIL BRANCH

NOV 17 1992

In the Matter of )

Amendment of Section 73.202(b) )  
Table of Allotments )  
(Greenfield and Seligman, Missouri )  
and Huntsville, Arkansas )

MM Docket No. 92-49  
RM-7924

RECEIVED

NOV 18 1992

To: Chief, Policy and Rules Division

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

JOINT REQUEST FOR APPROVAL OF AGREEMENT,  
DISMISSAL OF COUNTERPROPOSAL AND GRANT OF PETITION

KYOO Broadcasting Company (hereinafter "KBC"),  
permittee of KYOO-FM at Halfway, Missouri, and KJEM-FM, A  
Limited Partnership (hereinafter "Limited",) licensee of  
KESE(FM) at Seligman, by their counsel and pursuant to  
Section 1.420(j) of the Commission's Rules, hereby jointly  
submit a settlement agreement for approval which effectively  
removes all conflicts in the above captioned rule making  
proceeding. It is also jointly requested that the  
Commission dismiss KBC's pending Counterproposal and grant  
Limited's original petition in this proceeding. In support  
whereof, the following is shown:

1. KBC filed, as part of its Comments in this  
proceeding, a Counterproposal requesting the substitution of  
Channel 226C3 for Channel 226A at Halfway, Missouri and the

modification of KYOO-FM's construction permit accordingly. This request conflicted with the original petition filed by Limited which sought the substitution of Channel 227C1 for Channel 227C2 at Seligman, Missouri and the modification of KESE(FM)'s license accordingly.

2. Facing the possibility of a long and expensive fight over which facility would receive an upgraded allotment, both KBC and Limited have reached a settlement agreement which removes all of the conflicts in this proceeding. As part of this agreement, KBC agrees to withdraw its expression of interest in, and seek dismissal of, its Counterproposal requesting the substitution of Channel 226C3 for Channel 226A at Halfway, Missouri.

3. In return for KBC's withdrawal of its expression of interest in, and dismissal of, the Counterporposal seeking Channel 226C3 at Halfway, Limited agrees to pay KBC an amount equal to the expenses incurred by KBC in prosecuting its Counterproposal. A copy of the settlement agreement between the parties is attached as Exhibit 1. This agreement includes the exact nature and amount of consideration Limited is to pay KBC as well as an itemized accounting of the expenses for which KBC seeks reimbursement.

4. Attached as Exhibit 2 is an affidavit from KBC certifying that neither KBC, nor any of its principals, have received, or will receive, any money or other consideration in excess of legitimate and prudent expenses in exchange for

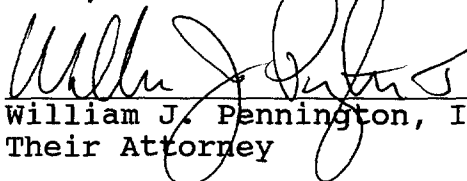
the withdrawal of the expression of interest and dismissal of its Counterproposal in this proceeding.

5. The approval of this settlement agreement, dismissal of KBC's Counterproposal and grant of Limited's petition in this proceeding would be in the public interest, as it would resolve all of this conflicts between the parties and allow KESE(FM) to greatly expand its coverage area and better serve the residents of northwest Arkansas and southwest Missouri.

THEREFORE, it is respectfully requested that the Commission approve the settlement agreement between KBC and Limited, dismiss the pending Counterproposal put forth by KBC and grant Limited's petition in this proceeding.

Respectfully submitted,

KYOO BROADCASTING COMPANY  
KJEM-FM, A LIMITED PARTNERSHIP

By:   
William J. Pennington, III  
Their Attorney

William J. Pennington, III  
Attorney at Law  
Post Office Box 4203  
Wilmington, NC 28406

November 9, 1992

STATE OF MISSOURI     )  
                              )  
COUNTY OF POLK        )

**SETTLEMENT AGREEMENT**

THIS AGREEMENT is hereby entered into as of the date written below, by and among KYOO BROADCASTING COMPANY (hereinafter "KBC"), permittee of FM Broadcast Station KYOO-FM at Halfway, Missouri, and KJEM-FM, A LIMITED PARTNERSHIP (hereinafter "Limited"), licensee of FM Broadcast Station KESE(FM) at Seligman, Missouri.

NOW THEREFORE, for in consideration of the mutual promises and undertakings herein contained, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. KBC hereby agrees to withdraw its expression of interest in and seek dismissal of its Counterproposal in MM Docket No. 92-49. This Counterproposal requested the substitution of Channel 226C3 for Channel 226A at Halfway, Missouri.

2. Limited agrees to pay KBC the sum of \$1,500.00 (One Thousand Five Hundred Dollars) for withdrawal of its expression of interest in the proposed KYOO-FM upgrade at Halfway, Missouri and the dismissal of its counterproposal in MM Docket No. 92-49. The sum will be paid as follows:

a) \$1,500.00 (One Thousand Five Hundred Dollars) cash upon the issuance of a Final Report and Order, not subject to administrative or judicial review, in MM Docket

No. 92-49 where Channel 227C1 is substituted for Channel 227C2 at Seligman, Missouri.

3. The sum of \$1,500.00 (One Thousand Five Hundred Dollars) Limited is to pay KBC shall represent the legitimate and prudent expenses incurred by KBC in prosecuting its counterproposal in MM Docket NO. 92-49.

4. No inducements, representations, or warranties except as specifically set forth in this Agreement have been made by any of the parties to this Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supercedes any and all prior agreements or any other understandings between the parties of whatever nature with respect to the subject matter. No provision of this Agreement shall be changed or modified, nor shall this Agreement be discharged in whole or in part, except by an agreement in writing signed by the party against whom the change, modification, or discharge is claimed or sought to be enforced, nor shall any waiver of any of the conditions or provisions of this Agreement be effective and binding unless such waiver shall be deemed to be a waiver of any preceding or succeeding breach of the same of any other provision. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each such counterpart were upon the same instrument.

5. Both parties represent and warrant that it has the right to enter into this Agreement, and there are no

agreements, expressed or implied, that in any manner would prevent the parties from entering into this Agreement or would impede the parties from meeting the obligations hereunder.

6. All notices required under this Agreement shall be in writing and shall be deemed given to the addressee when mailed if mailed by prepaid, certified, first class United States mail to the address for notice of such addressee set forth below:

If to KBC

Mel Pulley  
KYOO Broadcasting Company  
304 East Jackson  
Bolivar, MO 65613

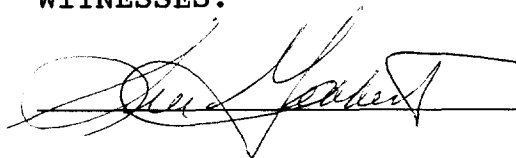
If to Limited


Elvis Moody  
KJEM-FM, A Limited  
Partnership  
216 North Main Street  
Bentonville, AR 72712

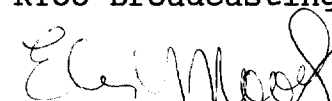
7. This Agreement shall be governed by and construed with the laws of the State of Missouri, with regard to its choice of law rules.

Dated this 9<sup>th</sup> day of November,  
1992.

WITNESSES:

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
Mel Pulley, President  
KYOO Broadcasting Company

  
\_\_\_\_\_  
Elvis Moody, General Partner  
KJEM-FM, A Limited Partnership

A F F I D A V I T

COUNTY OF POLK                     )  
                                          )     ss:  
STATE OF MISSOURI                )

MEL PULLEY, being duly sworn upon oath deposes and says:


That he is the President and majority stockholder in KYOO Broadcasting Company, permittee of a new FM Broadcast Station (KYOO-FM) at Halfway, Missouri on FM Channel 226A.

That he agrees to withdraw his expression of interest in upgrading KYOO-FM to C3 facilities on FM Channel 226 and requests that the Federal Communications Commission dismiss KYOO Broadcasting Company's Counterproposal in MM Docket No. 92-49.

That neither KYOO Broadcasting Company nor any of its principals has received, or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the withdrawal of expression of interest or request for dismissal of its Counterproposal in MM Docket No. 92-49.

That it has been agreed upon by the parties that KYOO Broadcasting Company will be paid \$1,500.00 (One Thousand Five Hundred Dollars) in cash by KJEM-FM, A Limited Partnership upon the Federal Communications Commission's issuance of a Final Report and Order in MM Docket No. 92-49 where Channel 227C1 is substituted for Channel 227C2 at Seligman, Missouri for use by FM Broadcast Station KESE.

That \$1,500.00 (One Thousand Five Hundred Dollars) represents the total of all legitimate and prudent expenses incurred by KYOO Broadcasting Company in the prosecution of its Counterproposal in MM Docket No. 92-49. (A notarized copy of these expenses is attached to this affidavit.)

  
\_\_\_\_\_  
Mel Pulley, President  
KYOO Broadcasting Company

Subscribed and sworn to before me this 9<sup>th</sup> day of November, 1992

  
\_\_\_\_\_  
Notary Public

My Commission expires 11-3-95


SUE GABBERT                     Notary Public  
Lawrence County     State of Missouri  
My Commission Expires     11-3-1995



KYOO BROADCASTING COMPANY EXPENSES

The following is a true and accurate list of KYOO Broadcasting Company's expenses associated with the prosecution of the Counterproposal put forth in MM docket No. 92-49.

- 1) William J. Pennington, III, Attorney at Law  
Legal and Engineering Expenses. \$1,500.00

  
\_\_\_\_\_  
Mel Pulley, President  
KYOO Broadcasting Company

Subscribed and sworn to before me this 9<sup>th</sup> day of November, 1992.

  
\_\_\_\_\_  
Notary Public

My Commission Expires 11-3-95

SUE GABBERT      Notary Public  
Lawrence County      State of Missouri  
My Commission Expires Nov. 3, 1995

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 12<sup>th</sup> day of November, 1992, I deposited copies of the foregoing "Joint Request For Approval of Agreement, Dismissal of Counterproposal and Grant of Petition" in the United States mail, first class, postage prepaid, addressed to the following:

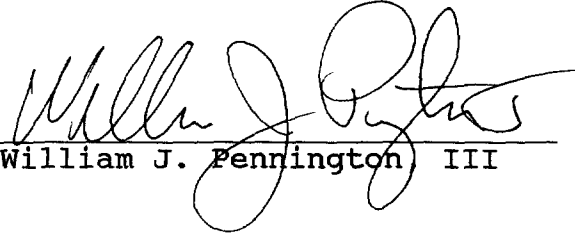
Andrew J. Rhodes, Chief  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 8322  
Washington, DC 20554

Ms. Kathleen Scheuerle  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 8317

KXBR, Inc.  
Station KXBR  
19 East 200 South  
Salt lake City, UT 84111

Demaree Media, Inc.  
Station KFAY-FM  
Post Office Box 878  
Fayetteville, AR 72712

KZPF Radio  
Ozark Mountain Broadcasting, Inc.  
512 West Edgewood  
Springfield, MO 65807

  
\_\_\_\_\_  
William J. Pennington, III